No. 769

In the Supreme Court of the United States

October Term, 1954

Joe V. [illegible] Gonzales, Petitioner

v.

[illegible]

ON PETITION FOR A WRIT OF CERTIORARI TO THE [illegible]

BRIEF FOR THE UNITED STATES IN OPPOSITION

INDEX

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No. 69

JOE VALDEZ GONZALES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 98–100) is reported at 212 F. 2d 71. The order of the District Court denying a motion for judgment of acquittal, incorporated by reference in the opinion of the Court of Appeals, appears at R. 81–92.

JURISDICTION

The judgment of the Court of Appeals was entered on April 15, 1954 (R. 97). The petition for a writ of certiorari was filed on May 10, 1954. The jurisdiction of this Court is invoked

under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the denial by the selective service board of petitioner's claim of classification as a conscientious objector was without basis in fact.

2. Whether it is required, under the Fifth Amendment or the Universal Military Training and Service Act, that a registrant be given further notice and opportunity to present evidence in support of his claim of classification as a conscientious objector after the Department of Justice has made its recommendation to the Appeal Board.

STATUTE INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 612, 622; 65 Stat. 75, 86:

Section 6 (j) [50 U. S. App., Supp. V, 456 (j)]:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political,

sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to

be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *

Section 12 (a) [50 U. S. C. App. Supp. V, 462 (a)]:

* * * Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title

> * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the Sixth Circuit (R. 97), affirming the judgment of the District Court for the Eastern District of Michigan finding him guilty of violating the Universal Military Training and Service Act by refusing on February 19, 1953, to be inducted into the armed forces, and imposing a sentence of three years' imprisonment and a fine of $500 (R. 93).

Petitioner's record with the selective service system may be summarized as follows:

He was born on July 22, 1931, and registered on January 4, 1950 (R. 34). In his classification questionnaire, filed on March 9, 1951, petitioner claimed that he was ordained as a minister of the Jehovah's Witnesses sect on February 19, 1950 (R. 37), and that he was a conscientious objector (R. 39).

He further stated that his education had consisted of elementary school, two years of high school, and "private instruction by Prof. H. Graffis" in the Bible, commencing in November 1949 and leading to a certificate on October 1, 1950 (R. 38); that he had been married on

September 27, 1948 (R. 37); that he had been working for four years as a "crater bander and car checker", but did not expect to continue indefinitely in this trade (R. 37–38); that since August 19, 1950, his work had been with Great Lakes Steel Corporation; and that he presently worked an average of 40 hours per week at $1.50 per hour (R. 38).

In his special form for conscientious objectors, filed on April 3, 1951 (R. 43), petitioner stated, *inter alia,* that he was opposed to noncombatant training and service as well as to participation in war (R. 43); that:

> The basis for my believe is found in the ten commandments of God found in the Bible—Love of God and Love of neighbor—Anything that would cause me to violate these I couldn't do. [R. 43];

that he believed in force "[i]n protection of person and ministerial activities, but at no time in aggression" (R. 44); that the depth of his religious convictions was demonstrated by the fact that in December 1949 he "started out actively in the service of God, after some home Bible studies and on October 1 of 1950 was recognized as a pioneer" (R. 44); that he had given no public expression to his claim of conscientious objection, except as "stated above" (R. 44); that he had lived at 338 Melrose Place, San Antonio, Texas (the address of his father) until 1948 and thereafter in Detroit (R. 45); and that both his

parents were Catholics (R. 45–46). In response to the request, in the form, for an official statement of the sect in relation to participation in war, petitioner stated, "I am basing myself entirely on my knowledge of the Bible" (R. 46).[1]

On April 10, 1951, petitioner was classified III–A (R. 40). He requested a personal appearance before the board (R. 49), but the case was forwarded to the appeal board, which likewise classified him III–A (R. 50), and he was so notified on June 15, 1951 (R. 40).

On January 8, 1952, petitioner was reclassified I–A (R. 40) and requested a personal appearance (R. 50). At the hearing on February 12, 1952, petitioner testified that, as a pioneer since October, 1950, he devoted a hundred hours per month "to ministerial activities" (R. 53); that his 40 hours per week with the steel company did not interfere with his religious work (R. 53, 56); that his congregation met every Thursday and "sometimes talks [were] handed to [peti-

[1] The selective service file also discloses the following, filed on April 8, 1951:

An affidavit of 22 persons that they "recognize[d]" petitioner as "a minister of the Gospel"; that they had observed him for a year and a half regularly attending meetings for advanced study and "attending and taking part in the divinity school of Jehovah's Witnesses as well as performing other duties required of ministers of the Gospel" (R. 48).

A certificate of four persons that petitioner was "conducting weekly Bible studies with [them]," and that they "recognize[d] him to be a minister of the gospel and [they] received spiritual benefit by his weekly visits" (R. 49).

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tioner] that [he] should make and other times [petitioner] conduct[ed] Bible studies with different people" in homes and also in the hall of the ministry school (R. 55–56); and that he was also the advertising servant of the downtown unit, arranging for distribution of 2,000 magazines per month (R. 55).

Petitioner further testified that, as stated in the special form, his claim that he was a conscientious objector was based entirely on his personal interpretation of the Bible (R. 54); that there was no statement in the regular creed relating directly to war and that some Jehovah's Witnesses joined the armed forces (R. 57); that although the steel company for which he worked manufactured articles of war he had to earn his living, just as he had to pay income tax to a Government which might apply some of the money to articles of war—that this was only "rendering unto Caesar things that are Caesar's," as distinguished from one's life which does not "belong to him" (R. 58).[2]

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[2] In addition to the transcript of the hearing, a summary appears in the file, as follows (R. 51–52):

2/12/52.

GONZALES

Claims he is a minister or C. O.
Ordained in Feb. 1950.
Pioneer in Oct. 1950.
Employed at Gt. Lakes Steel—8/18/50 to date.
Not a paid minister.
No certificate of ordination.
All activities are voluntary.

[Footnote cont'd on next page]

On February 19, 1952, the I–A classification was continued (R. 40), and upon appeal (R. 61), the case was referred, on June 2, 1952, to the Department of Justice for investigation and recommendation (R. 41). The Department of Justice, on December 1, 1952, reported to the appeal board the following additional facts, *inter alia:* that petitioner had previously been a Catholic, and that his five sisters and a brother, as well as his parents, were Catholics (R. 67); that petitioner's wife had become a Jehovah's Witness in 1941 and petitioner was "baptized a member in February 1950" (R. 67); and that petitioner and his wife were "said to be very religious" (R. 67). The report concluded (R. 67–68):

> After a personal appearance, the Hearing Officer stated that registrant appeared

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Advertising Servant for Downtown Area—Distributing magazines.

Meet various days for bible study.

Meet at various homes of members.

No church as such.

Does missionary work.

Theocratic Ministry School.

Not a school of theology.

Theocratic Aid to Kingdom Publishers a book outlining procedure. No declaration in book or teaching directly outlawing war.

It is a matter of personal interpretation.

2/19/52 IA JG IA PON.

Reason for working—Manufacturing materials for war. Would not aid injured if hurt in aggressive way or in battle. "Render unto Ceasar," etc.

2/19/52.

IA JG.

> to be a sincere Jehovah's Witness but concluded that his affiliation with that sect has been too recent and too closely related to his draft status to warrant the acceptance of his conscientious objector position as genuine. The fact that registrant became a member of the Jehovah's Witness sect one month after his Selective Service System registration in January, 1950, despite the fact that his wife had been a member for many years, lends weight to this conclusion.
>
> After consideration of the entire file and record, the Department of Justice finds that the registrant's objections to combatant and noncombatant service are not sustained. * * *

Petitioner was classified I–A by the appeal board (R. 68–69), and on February 19, 1953, refused to be inducted (R. 77–78).

At the trial, the Department of Justice hearing officer's report to the Department, dated August 11, 1952, was submitted in evidence. It summarized the facts adduced in petitioner's appearance before him and in an F. B. I. report, substantially as related above in the summary of petitioner's statements and the recommendation of the Department of Justice (R. 12–16). The report concluded (R. 15–16):

> Registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war. * * *

> Although registrant is a "Pioneer" in his religious sect, and devotes at least 100 hours a month in religious activity, his affiliation with the sect has been too recent to warrant acceptance thereof as a deep-seated conviction. Until the fall of 1949 he was a Catholic and his conversion to the Jehovah's Witnesses is too closely related to his selective service status to be accepted yet as genuine.
>
> Recommendation:
>
> Claims of ministerial and conscientious objector classification not established. Class I–A classification sustained.

Upon cross-examination, the hearing officer testified that while petitioner "appeared" to be "a sincere Jehovah's Witness," his status as a conscientious objector was negated "upon the entire file," which disclosed as the "principal element" that the change from an extensive personal and family history of Catholicism was "too closely affilated with his registration with the Selective Service" (R. 19–20). The witness was asked whether "a person could not be a conscientious objector today because he was not one yesterday?" (R. 19). He replied that the question was not one to be answered "as a general question" since "this particular case was an exceptional one. * * * All of that added up to one thing to me. And I have had other cases where people would adopt a conscientious objector sect or a religious

affiliation just in order to avoid induction or induction into military service" (R. 19–20).

ARGUMENT

1. The essence of petitioner's first contention is that the denial of his claim to classification as a conscientious objector was arbitrary and capricious. The contention is thus directly stated in his question IV (Pet. 4), and is indirectly stated in his questions II, III, and V, in which petitioner treats separately each of several facts alleged to have been relied upon by the Appeal Board.

The proper inquiry, of course, is not whether any one separate element of fact is sufficient in itself to support the classification by the board; rather the question is whether all the facts, considered in their interrelationship and in their cumulative effect, establish a basis for the classification.[3] Moreover, if there are facts supporting the board's decision, the classification is not to be set aside merely because another tribunal might have reached a different appraisal of the weight of the facts. *Estep* v. *United States,* 327

[3] Petitioner makes the assertion, for example: "The courts below held that [registrants] could lose their conscientious objector status if they worked or were willing to work in a defense plant" (Pet. 24). No such holding was made. The participation in such activity was considered as only one element of a group of elements relating to the sincerity of petitioner.

U. S. 114, 122–123, quoted in *Dickinson* v. *United States*, 346 U. S. 389, 394.

Since the complex combinations of facts and dates involved differ in each case of this kind, we submit that the instant case does not involve a conflict of decisions, as petitioner asserts. Thus, in *Taffs* v. *United States*, 208 F. 2d 329, 330 (C. A. 8), certiorari denied, 347 U. S. 928, *Schuman* v. *United States*, 208 F. 2d 801, 805 (C. A. 9), and *Hartman* v. *United States*, 209 F. 2d 366, 369 (C. A. 2), upon which petitioner relies—to cite only a single difference from the instant case—the registrants were considered by the hearing officers to be sincere in their avowal of conscientious objections and the recommendations against granting the exemption were based either upon the nature of the concededly sincere belief, or simply upon the recency of their adherence to their professed beliefs in relation to their obligations under the draft law. Here, on the other hand, no creed of petitioner's sect is involved and the time of petitioner's conversion was only one of the elements considered in determining the depth and honesty of his claim.

Petitioner registered on January 4, 1950. He became a Jehovah's Witness by baptism on February 19, 1950. Even if there be added to this brief period between his registration and baptism the additional month or two before January 4 in which, as he stated, he had engaged in "some"

Bible study and active "service of God" (*supra*, p. 6), there was at most only a very brief period for acquiring the deep-seated convictions petitioner claimed.[4]

The significance of the time of petitioner's adoption of his new faith becomes even more clear when viewed in the light of his prior history and other facts. It was in this light that the hearing officer, the Department of Justice, and presumably the appeal board as well, disbelieved his avowal of conscientious objections as being too recent in origin and too closely related in point of time to his registration to be convincing.[5] There was the fact that although petitioner's wife had been a Jehovah's Witness for eight years, any influence on her part elicited no action from him from the time of the marriage in 1948 until after his registration, or at most the very eve of registration. Petitioner had been a Catholic and all his family still were Catholics.

Petitioner himself stated and emphasized that becoming a member of the sect did not automatically make one a conscientious objector, since this

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[4] Petitioner knew, of course, in this previous month or two that, being 18, he would have to register.

[5] Petitioner's assertion that the court below held "that petitioner was * * * sincere in his objections to participation in war" (Pet. 23) is a misstatement. The court held the contrary, pointing out the distinction between sincerity in the general beliefs of the sect and sincerity in the independent matter of conscientious objection to participation in war (R. 99).

was left to each member to determine for himself. As petitioner pointed out, some of Jehovah's Witnesses joined the armed forces.

Finally, there was the affirmative fact that petitioner worked in a steel plant manufacturing articles for use in war, work which he had commenced in August, 1950 (R. 51), some months after he claimed to have become a conscientious objector.

It cannot be contended that a registrant's naked assertion of sincerity is binding on the selective service system in every case except the rare one in which evidence may be obtained that the registrant slipped into an outright confession or boast concerning the exaggeration or actual falsification of his true belief. The fact must be ascertained, like subjective facts in so many other branches of the law, by the application of judgment and experience to the available objective facts. Upon the record here, there was clear basis in fact for the conclusion that petitioner had not arrived by reason of any religious training or belief at such conscientious objection to war as is required for the statutory exemption.[6]

[6] Petitioner argues that the case involves a question (Pet. 2, 22–23) whether his willingness to use force "in protection of person and ministerial activities" (R. 44) constitutes a basis in fact for denial of the conscientious objector classification. We find no indication of reliance upon this fact by the hearing officer, the Department of Justice, the selective service system boards, the trial judge, or the Court of Appeals.

[Footnote cont'd on next page]

2. Petitioner contends that due process and the necessity of fair and just treatment under the Universal Military Training and Service Act require that the appeal board give a registrant an opportunity to answer a recommendation by the Department of Justice (Pet. 5–6 [Point VI], 28–30 [Point V]. The short answer is that Congress, while providing in great detail for the additional precaution of an investigation and hearing by the Department of Justice, did not provide or intend to provide in addition yet another *de novo* circuit of charge and counter-charge before the appeal board. Petitioner's contention overlooks the extremely narrow limits of the function of the Department of Justice as a merely recommending body, as set forth by this Court in *United States* v. *Nugent,* 346 U. S. 1, 9–10:

> * * * [N]either the Department's "appropriate investigation" nor its "hearing" is the determinative investigation and the determinative hearing in each case. It has regularly been assumed that it is not the function of this auxiliary procedure to provide a full-scale trial for each appealing registrant.
>
> * * * * *

Petitioner's statement (Pet. 2) that "[t]he Court of Appeals, as a basis for affirmance, found that petitioner's willingness to use force in self-defense was a basis in fact", is a complete misapprehension of clear language of the Court of Appeals. See R. 99.

Respondents urge that they have a right to such a procedure under the Fifth Amendment. We cannot agree.

* * * * *

It is always difficult to devise procedures which will be adequate to do justice in cases where the sincerity of another's religious convictions is the ultimate factual issue. It is especially difficult when these procedures must be geared to meet the imperative needs of mobilization and national vigilance—when there is no time for "litigious interruption." *Falbo* v. *United States*, 320 U. S. 549, 554 (1944). Under the circumstances presented, we cannot hold that the statute, as we construe it, violates the Constitution.[7]

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[7] Petitioner's citations of hearing requirements in dissimilar administrative proceedings are inapposite (Pet. 29–30), as is also his reference (Pet. 29) to *Brewer* v. *United States*, 211 F. 2d 864 (C. A. 4), involving the totally different situation of a refusal of access, to an inquiring registrant, with respect to reports which were in the selective service file and at one time were considered by the appeal board. Similarly, *De Graw* v. *Toon*, 151 F. 2d 778, 779–780 (C. A. 2), involved information not in the file at the time of the personal hearing before the local board, and apparently considered by the local board after the hearing. *United States* v. *Balogh*, 157 F. 2d 939, 941, 943 (C. A. 2), vacated on other grounds 329 U. S. 692 (see 160 F. 2d 999), involved consideration by the local board of the report of a panel of ministers, to which the registrant may have had no access, and which was held improper matter for consideration in any event.

CONCLUSION

The questions presented on the particular facts of this case were correctly decided below. No conflict of decisions is involved. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1954.

U. S. GOVERNMENT PRINTING OFFICE: 1954